IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Appeal Lodging No. 75 of 2005

in

Writ Petition No. 2736 of 2004

Vikram Shama Shetty. ... appellant

vs

State of Mah and ors.. respondents

Mr F.Divetri with Rajiv Deokar i/b D B Sawant for appellant

Mr. G.Mattos AGP for respondents

CORAM;A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 8.2.2005

P C:

1 The only question arise for consideration is whether the revisional authority under the Bombay Prohibition Act, l949, hereinafter referred to as the said Act, was right in refusing FL-III licence on the ground that the distance between the establishment of the petitioner and the entrance to the mosque is less than 75 meters as provided under rule 45(l-C) of the said Act. Rule 45(l-C) provides that no licence under sub-rule (l-B) shall be granted in respect of any hotel or restaurant which is situated within a distance of seventy five metres from any educational or religious

institution or from any bus stand, station or depot of the Maharashtra State Road Transport Corporation or from the boundary of any National or State highway. Sub-rule (iii) if rule 45(l-C) which provides for distance reads as follows:

> "(iii) The distance referred to in clause (a) of this sub-rule shall be measured from the mid-point of the entrance of the hotel or restaurant along with the nearest path by which the pedestrian ordinarily reaches:
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> a) the mid-point of the nearest gate of the institution if there is a compound wall and if there is no compound wall, the mid-point of the nearest entrance of the institution, or
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> b) the mid-point of the nearest gate of the bus stand, station or depot of the Maharashtra State Road Transport Corporation, if there is a compound wall and if there is no compound wall, the nearest point of the boundary of such ;bus stand, station or depot, or
>
> c) the boundary of the National or State

highway".

2 The distance between the appellant's restaurant and the mosque in question was measured on two occasions i.e. on l9.l2.2003 and 3.ll.2004. On the second occasion the measurement was carried out by the Court Commissioner who is an Architect from the panel of Architects maintained by this court. The Commissioner has reported that there are three entrances to the mosque out of which two entrances are from the common passage having access to Narsi Natha St and the third entrance is from Abhaychand Gandhi Marg. The report shows that the first entrance to the mosque is from Narsi Natha Street to the establishment of the petitioner is a distance of 68.45 meters and is directly opened into the prayer hall of the mosque. The second entrance to the mosque from Narsi Natha St is at a distance of 98.47 meters whereas the third entrance to the mosque from Abhaychand Gandhi Marg is at a distance of 60.06 meters. The report notes that this door is generally closed and is occasionally used as an exit.

3 The main argument of the learned counsel for the appellant is that the first and third entrance are not commonly used and therefore these entrances

ought not to be taken into consideration for the purpose of measurement and since admittedly the main entrance to the mosque from Narsi Natha St is at a distance of 98.47 meters which is more than 75 meters, the order of the revisional authority is liable to be struck down.

4. This argument is refuted by the learned single Judge by observing as follows:

> " From the report of the Commissioner appointed in these proceedings, it is clear that two entrances to the mosque are in any event within the mandatory distance of 75 meters. It may be that on a particular occasion one of the entrances is closed but it is evident that the door thereto opens directly into the prayer hall of the mosque. One of those entrances, the Commissioner records, is occasionally used as an exit point. One of the three entrances, the second entrance lies beyond the distance of 75 meters. The photographs which are produced before the Court by the A.G.P. confirm what has been stated by the Court Commissioner, namely, that the establishment of the Petitioner is located across the road

from the mosque. These photographs are taken on record and marked as X-1, X-2 and X-3. The exercise of jurisdiction by the Revisional authority in this matter cannot by any means be regarded as perverse or contrary to law. The measurements have not been challenged in the submission of Counsel. The view which has been formed by the authority does not warrant any interference under Article 226 of the Constitution.

The Rules have a statutory character and have been framed in the public interest. Since the Rules hold the field, the issue as regards the maintenance of a minimum distance has to be decided not on the basis of general consideration, but on an application of the Rules. The distance between the establishment of the Petitioner and the mosque falls within the prohibition imposed in Rule 45(1- C). The Court under Article 226, it is well settlement, cannot mandate or direct a deviation from the provisions of law validity made including Rules framed in exercise of the power of delegated legislation."

5. We are in agreement with the finings recorded by the learned single Judge and we do not see any ground to entertain this appeal. Appeal is dismissed accordingly with no order as to costs.